

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**ELSTER JOSEPH PONTHEUX**

**PLAINTIFF**

**v.**

**No. 4:05CV113-M-D**

**GEORGE BENFORD  
JOHN BEARRY**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION,  
DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

On consideration of the file and records in this action, and on defendants' motion for summary judgment, the Court finds that the Report and Recommendation of the United States Magistrate Judge dated October 3, 2006, was on that date duly served by first class mail upon the plaintiff and the attorneys for the defendants; that more than ten days have elapsed since service of said Report and Recommendation; and that no objection thereto has been filed or served by said parties. The Court is of the opinion that the Report and Recommendation should be approved and adopted as the opinion of the Court. It is, therefore, **ORDERED:**

1. That the Report and Recommendation of the United States Magistrate Judge dated October 3, 2006, be, and it is hereby, approved and adopted, and that the proposed findings of fact and conclusions of law therein set out be, and they are hereby, adopted as the findings of fact and conclusions of law of the Court.

2. That defendants' motion for summary judgment be and hereby is **DENIED**.

**THIS** the 3<sup>rd</sup> day of October, 2006.

/s/ Michael P. Mills  
**UNITED STATES DISTRICT JUDGE**